

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**LESA COMPTON, individual and as
Parent, Guardian, and Next Friend of the
infant, LaRANDI G. COMPTON,**

Plaintiff,

v.

Civil Action No. 2:17-cv-04051

**MINGO COUNTY BOARD OF
EDUCATION,**

Defendant.

NOTICE OF REMOVAL

For its notice herein, this Defendant, the Mingo County Board of Education, by counsel Jennifer E. Tully, John P. Fuller, and the law firm of Bailey & Wyant, PLLC, pursuant to 28 U.S.C. §§ 1331 and 1441, respectfully represents to the Court as follows:

1. On or about September 1, 2017, an action was filed in the Circuit Court of Mingo County, West Virginia, Civil Action No. 17-C-152 on the docket of that Court. In accordance with 28 U.S.C. §1446(b), this Notice is filed within 30 days of the date on which the Complaint was served upon the Mingo County Board of Education.

2. Service of process was made personally upon Mingo County Board of Education President James Farley on or about September 6, 2017. *See Complaint, attached hereto as **Exhibit***

1.

3. A copy of the Circuit Court's docket sheet is attached as hereto as ***Exhibit 2.***

4. In the Complaint, Ms. Compton alleges violations of the Equal Protection Clause of the Constitution of the United States of America and violations of the Americans with Disabilities

Act of 1990.

5. One of the category of cases over which the District Courts have original jurisdiction are cases that involve a “federal question,” those cases “founded on a claim arising under the constitution, treaties, or laws of the United States.” 28 U.S.C. §1331.

6. Ms. Compton’s cause of action against the Defendant is federal in character because it alleges that the Defendant violated her federal constitutional rights. Her Complaint seeks specifically to vindicate rights secured by the United States Constitution. This Court has held that “[w]hen a plaintiff specifically and intentionally raises a federal question on the face of the complaint, the action is removable regardless of the vagueness of the allegations.” *Scott v. Greiner*, 858 F.Supp. 607 (S.D.W.Va., 1994)

7. The filing of this Notice, along with the filing of a copy of the Notice in the Circuit Court of Mingo County, West Virginia, and service of this Notice upon opposing counsel, serves immediately to confer exclusive jurisdiction over this case upon the United States District Court, and divests the Circuit Court of Mingo County, West Virginia of jurisdiction over these proceedings. *See e.g., Maseda v. Honda Motors Co.*, 861 F.2d 1248, 1254-55 (11th Cir. 1988) (stating that “after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in this case.”) “Any subsequent proceedings in state court are void ab initio. *Id.*

Wherefore, the Defendant requests that the civil action pending against it in the Circuit Court of Mingo County, West Virginia be removed to this Court.

Respectfully submitted September 27, 2017.

**Mingo County Board of Education,
By Counsel,**

/s/ Jennifer E. Tully

Jennifer E. Tully (WV Bar #9356)

John P. Fuller (WV Bar #9116)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**NOTICE OF REMOVAL**” was served upon the following parties through the Court’s Electronic Case Filing (ECF) system on this day, September 26, 2017:

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Attorney For: Plaintiffs

/s/ Jennifer E. Tully
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